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August 23, 2021

BY ECF

Honorable Cathy Seibel
United States District Judge
Southern District of New York
300 Quarropas St.
White Plains, NY 10601

Application granted. Counsel is directed to provide the Court with a status update, to the extent there is one, by November 12, 2021.

SO ORDERED.


CATHY SEIBEL, U.S.D.J.

**Re: *United States v. Jose Rivera*, 12 Cr. 169 (CS)
Jose Rivera v. United States, 16 Cv. 4983 (CS)**

8/23/2021

Dear Judge Seibel,

I write to provide an update regarding Mr. Rivera's pending motion under 28 U.S.C. § 2255 based on *Johnson v. United States*, 135 S. Ct. 2551 (2015) and in response to the Court's Order of August 9, 2021 (Dkt. No. 30).¹

After the Second Circuit granted Mr. Rivera's motion for leave to file a successive petition and transferred the proceedings back to the District Court, Dkt. No. 27, this Court continued to stay the motion until the Circuit resolved whether attempted Hobbs Act robbery is a crime of violence, Dkt. No. 29.

On August 9, 2021, this Court pointed out that the Second Circuit ruled on the question of whether attempted Hobbs Act robbery is a crime of violence for the purpose of 18 U.S.C. § 924(c) in *McCoy*, 995 F.3d 32 (2d. Cir. 2021), but that no defense brief was filed. *See* Dkt. No. 30. Because there is a split among the Circuits, that same question is now pending before the United States Supreme Court in *United States v. Taylor*, No. 20-1459, 2021 WL 2742792, at *1 (U.S. July 2, 2021).

Thus, we request that this Court continue the instant stay until the Supreme Court's disposition of *Taylor*. Other courts have granted similar requests. *See, e.g., United States v. Parkes*, 21-1324 (2d Cir. Jun. 16, 2021);

¹ The docket citations correspond to the criminal case number, 12 Cr. 169 (CS).

United States v. Padilla, 94 Cr. 313 (CSH), Dkt. No. 917 (S.D.N.Y. Jul. 20, 2021);
United States v. Bernard, 98 Cr. 500 (FB), Dkt. No. 531 (and corresponding
electronic order) (E.D.N.Y. May 28, 2021).

Thank you for your consideration.

Respectfully submitted,

/s/

Sylvie Levine

Assistant Federal Defender

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